

Summary: The Government filed a motion for a preliminary order of forfeiture, contending that the Defendant no longer has any right to possess firearms or ammunition. The Court granted the motion, finding that pursuant to 18 U.S.C. § 922(g)(1) and (3), it is unlawful for the Defendant to possess any firearms or ammunition. The Court entered a preliminary order of forfeiture of property.

Case Name: USA v. Jeffery Andahl

Case Number: 1-08-cr-28

Docket Number: 21

Date Filed: 7/8/08

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	
)	PRELIMINARY ORDER
)	OF FORFEITURE
vs.)	
)	Case No. 1:08-cr-028
Jeffery Andahl,)	
)	
Defendant.)	

Before the Court is the Government's Motion for Preliminary Order of Forfeiture filed on June 19, 2008. See Docket No. 17. The Defendant filed a response in opposition to the motion on July 2, 2008. See Docket No. 18. The Court grants the Government's motion for the reasons set forth below.

The Government contends that because the defendant, Jeffery Andahl, has pled guilty to being an unlawful user of a controlled substance in possession of firearms and ammunition, he no longer has any right to possess firearms or ammunition pursuant to 18 U.S.C. § 922(g)(1) and (3). The Government contends that Andahl does not have a legitimate claim to the firearms or

ammunition because he cannot legally possess them and that Andahl's relatives may assert their rights to the property in an ancillary proceeding. The Government moves the Court for a preliminary order of forfeiture so that Andahl's possession of the firearms and ammunition is terminated.

The Defendant contends that Rosemary Andahl owns some of the firearms, he cites a recent United States Supreme Court case that affirms the Second Amendment right to bear arms, and notes his ownership of some of the firearms set forth in the Government's motion. See Docket No. 18.

Pursuant to 18 U.S.C. § 922(g)(1) and (3), it is unlawful for a person to possess a firearm or ammunition if that person has been convicted of a crime punishable by imprisonment for a term exceeding one year or if that person is an unlawful user of a controlled substance. Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure states as follows:

As soon as practicable after . . . a plea of guilty . . . is accepted, on any count in an indictment . . . regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense.

Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure provides that "If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture . . . directing the forfeiture of specific property without regard to any third party's interest in all or part of it."

The Court finds that pursuant to 18 U.S.C. § 922(g)(1) and (3), it is unlawful for Andahl to possess any firearms or ammunition. The Court also finds that the Government has established the requisite nexus between Andahl's property and the offense which warrants the entry of a preliminary order of forfeiture. It is clear that a preliminary order of forfeiture is warranted without regard to any third party's interest in such property at this stage.

In the indictment, the Government sought forfeiture of specific property pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), as property used or intended to be used to commit or to promote the commission of violations of 18 U.S.C. §§ 922(g)(3) and 924(a)(2).

As a result of the Defendant's plea of guilty on June 17, 2008, the Government's motion for a preliminary order of forfeiture (Docket No. 17) is **GRANTED** and it is **ORDERED, ADJUDGED** and **DECREED**:

(1) that all of the Defendant's right, title, and interest in the following property is forfeited, that the Government is authorized to seize the following property at the time of sentencing, and it will be forfeited to the Government for disposition in accordance with the law, that being:

- one Remington, Model 550-1, .22 caliber rifle, no serial number
- one Springfield, unknown model, .410 gauge (bore) shotgun, serial number 7629-2
- one Winchester, Model 94-30 WCF, .30-30 caliber rifle, serial number 1494381
- one Remington, Model 788, .243 caliber rifle, serial number B6139564
- one Maverick Arms, Model 88, 12 gauge shotgun, serial number MV56328G
- one Savage, Model 286, .22 caliber rifle, serial number A461179
- one Winchester, Model 12, 16 gauge shotgun, serial number 219629
- one Ruger, Model 10-22, .22 caliber rifle, serial number 253-95920
- one Colt, Model AR-15A2, .223 caliber rifle, serial number SP 347343
- one Ruger, Model Super Redhawk, .44 caliber revolver, serial number 550-36968
- one Ruger, Model GP100, .357 caliber revolver, serial number 174-35537
- one Colt, Model M1991A1, .45 caliber pistol, serial number CJ27333
- one Beretta, Model 92FS, 9 mm pistol, serial number BER282695Z
- one Heckler and Koch, Model USP, .40 caliber pistol, serial number 22-088140
- Winchester brand .44 Rem. Mag. caliber ammunition, .38 caliber ammunition, and .357 caliber ammunition
- Federal brand .40 caliber ammunition, .22 caliber ammunition, and 9 mm caliber ammunition
- American Eagle brand .22 caliber ammunition
- Sellier and Bellot brand .45 caliber ammunition; and
- Remington brand .40 caliber ammunition and .30-30 caliber ammunition

(2) that all of the forfeited property is to be held by the Bureau of Alcohol, Tobacco, and Firearms, in its custody and control.

(3) that the Bureau of Alcohol, Tobacco, and Firearms shall publish at least once for three successive weeks in The Bismarck Tribune, a newspaper of general circulation where the forfeited property was seized, notice of this Order; notice of the Government's intent to dispose of the property in such manner as the United States may direct; and notice that any person, other than the Defendant, having or claiming a legal interest in the above-listed forfeited property must file a petition with the Court within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier.

This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title, or interest in the forfeited property and any additional facts supporting the petitioner's claim and the relief sought.

The Government shall also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the Order of Forfeiture, as a substitute for published notice as to those persons so notified.

(4) that upon adjudication of any and all third-party interests, this Court will enter a Final Order of Forfeiture in which the interests of all persons will be addressed.

IT IS SO ORDERED.

Dated this 8th day of July, 2008.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court